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**FILED & ENTERED**

**OCT 11 2013**

CLERK U.S. BANKRUPTCY COURT  
Central District of California  
BY gae DEPUTY CLERK

**CHANGES MADE BY COURT**  
**UNITED STATES BANKRUPTCY COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**LOS ANGELES DIVISION**

In Re	)	CASE NO. 2:12-BK-15900RK
MARTIN and DIANA PEMSTEIN,	)	Chapter 11
Debtor,	)	ADV. NO. 2-12-AP-02467RK
MARTIN PEMSTEIN,	)	<b>ORDER DENYING PLAINTIFF'S</b>
Plaintiff,	)	<b>MOTION TO PROPERLY APPLY</b>
Vs.	)	<b>COURT'S STATEMENT OF DECISION</b>
HAROLD PEMSTEIN,	)	<b>GRANTING DEFENDANT'S FEES AND</b>
Defendant.	)	<b>COSTS</b>
	)	<b>DATE: 10/08/13</b>
	)	<b>TIME: 2:30 P.M.</b>
	)	<b>CTRM: 1675</b>

Plaintiff's Motion to Properly Apply the Court's Statement of Decision Granting Defendant's Fees and Costs came on regularly for hearing on **October 8, 2013**, at 2:30 p.m. in courtroom 1675 of the above entitled court. Martin Pemstein, moving party, appeared in person. Christopher L. Blank, attorney for Defendant, Harold Pemstein appeared by phone.

The court heard oral argument and the matter was deemed submitted.

The court adopted its tentative ruling which reads as follows: 1

1 "FRBP" refers to the Federal Rules of Bankruptcy Procedure. "FRCP" refers to the Federal Rules of Civil Procedure.

ORDER DENYING PLTF'S MOTION TO PROPERLY APPLY COURT'S STATEMENT OF DECISION RE ATTORNEY'S FEES


1 “The court deems plaintiff’s motion to be one pursuant to FRBP 9023 and FRCP  
2 59 to amend or alter judgment, which should be denied on the merits. The court  
3 may amend or alter a final order or judgment if it committed clear error or its  
4 initial decision was manifestly unjust. United National Insurance Co. v. Spectrum  
5 Worldwide, Inc., 555 F.3d 772, 780 (9th Cir. 2009). The court in awarding fees to  
6 defendant pursuant to Section 1717 of California Civil Code properly determined  
7 defendant was the prevailing party as to the lawsuit as a whole. Wood v. Santa  
8 Monica Escrow Co., 176 Cal.App.4th 802, 804 (2009). The court’s reasons for  
9 granting the award of fees were set forth in a written decision, which the court  
10 does not now find to have been made in clear error or to be manifestly unjust.”

11 **NOW THEREFORE, IT IS HEREBY ORDERED THAT** Plaintiff’s Motion is  
12 DENIED.

13 **IT IS SO ORDERED.**

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24 Date: October 11, 2013

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Robert Kwan  
United States Bankruptcy Judge

## NOTICE OF ENTERED ORDER AND SERVICE LIST

Notice is given by the court that a judgment or order entitled (*specify*): **ORDER DENYING PLAINTIFF'S MOTION TO PROPERLY APPLY COURT'S STATEMENT OF DECISION GRANTING DEFENDANTS' FEES AND COSTS** was entered on the date indicated as "Entered" on the first page of this judgment or order and will be served in the manner stated below:

**1. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBRs, the foregoing document was served on the following persons by the court via NEF and hyperlink to the judgment or order. As of **October 10, 2013**, the following persons are currently on the Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive NEF transmission at the email addresses stated below.

Christopher L Blank; clblank@pacbell.net

Alan W Forsley; awf@fredmanlieberman.com; awf@fkllawfirm.com; addy@fl-lawyers.net; lc@fl-lawyers.net; and awf@fl-lawyers.net

U.S. Trustee (SA); ustpreion16.sa.ecf@usdoj.gov

☐ Service information continued on attached page

**2. SERVED BY THE COURT VIA UNITED STATES MAIL:** A copy of this notice and a true copy of this judgment or order was sent by United States mail, first class, postage prepaid, to the following persons and/or entities at the addresses stated below:

Martin Pemstein

Plaintiff in Pro Se

38 Calle Aragon, Unit F

Laguna Woods, CA 92637

☐ Service information continued on attached page

**3. TO BE SERVED BY THE LODGING PARTY:** Within 72 hours after receipt of a copy of this judgment or order which bears an "Entered" stamp, the party lodging the judgment or order will serve a complete copy bearing an "Entered" stamp by United States mail, overnight mail, facsimile transmission or email and file a proof of service of the entered order on the following persons and/or entities at the addresses, facsimile transmission numbers, and/or email addresses stated below:

☐ Service information continued on attached page